IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4487 of 2007
Date of Decision: 9.5.2007

Himanshu and another

Petitioners

versus

Baba Farid University of Health Sciences and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Arvind Singh, Advocate for the petitioners
Ms.Nirmaljit Kaur, Addl.A.G. Punjab for respondent No.1
Shri Lalit Thakur, Advocate for respondent Nos.2 and 3
Shri Vikas Awasthy, Advocate for respondent No.4

Jasbir Singh, J.

This writ petition will dispose of CWP Nos.3919, 4024, 4129, 4321, 4487 and 6130 of 2007 as common questions of law and facts are involved in all these writ petitions. For facility of reference, facts are being taken from CWP No.4487 of 2007.

The petitioners are studying in 2nd Professional of B.A.M.S. Course (5 ½ years duration) with respondent No.2. On passing out necessary entrance examination, they got admission in the above-said course in the month of July, 2003. After spending 1 ½ years, they became eligible and appeared in final examination of 1st Professional in December, 2005 but they were declared fail in three subjects. Thereafter, they again appeared in the supplementary examination in the month of January, 2006. Except in one subject, the petitioners were declared pass. As per regulations of respondent No.1, the petitioners, after their 1st Professional annual examination, though failed in three subjects, were permitted and

allowed to attend classes in 2nd Professional year. They continued with their studies and are now praying that they be allowed to appear in the annual examination for the 2nd Professional year also.

It is an admitted position that as per Regulation of respondent No.1, the petitioners can pass the subjects in which they were declared fail in 1st Professional annual examination in the month of December, 2005, in six attempts i.e. they are entitled to pass those subjects upto May, 2008. It is also admitted position that as per regulation of respondent No.1, without passing all the subjects, the petitioners are eligible to attend classes for 2nd Professional. However, as per rules, they cannot sit in the annual examination of the 2nd Professional and also for the 3rd Professional. They will become eligible to appear in the annual examination for the 2nd Professional, only when they will pass all the subjects of 1st Professional, may be in six chances, after 1st annual examination. It is also an admitted fact that even without appearing in the 2nd Professional annual examination, the petitioners are eligible to be admitted in 3rd Professional.

It is contention of counsel for the petitioners that the procedure adopted is very irrational. By the time, the petitioners will pass all subjects of 1st Professional year upto May, 2008, they will forget everything, which they have studied in the 2nd Professional, if they are allowed to appear in the said annual examination thereafter.

A similar matter came up for consideration before this Court in *Bikramjit Singh and another v. Baba Farid University and others, CWP No.17180 of 2006, decided on 16.11.2006,* with regard to 2nd year Professional B.A.M.S. students, who were desirous of appearing in 3rd Professional annual examination. At the time of hearing in that case, counsel for respondent No.1 very fairly admitted that the matter is squarely

covered by ratio of the judgment of this Court in *Assempreet Kundi and another v. State of Punjab and others, CWP No.5843 of 2004, decided on 8.3.2006.* Accordingly, the students of 2nd year Professional, who have yet not passed all the subjects of 1st and 2nd year Professional, were allowed to appear in 3rd year Professional examination. (Order has been placed on record as Annexure P/5 with this writ petition.) We feel that in view of ratio of judgments in *Assempreet Kundi's case* and *Bikramjit Singh and another v. Baba Farid University and others (supra)*, the petitioners are also entitled to appear in 2nd year Professional annual examination. The petitioners have studied the course in the 2nd year Professional. They are entitled to clear all the subjects of first Professional year upto May, 2008 and if at this stage, they are not allowed to appear in the examination in the 2nd Professional year, by the time, they will clear all the subjects, they may forget everything, which they have studied in the 2nd Professional.

Faced with the situation, counsel for respondent No.1 states that let the petitioners sit in the annual examination for 2nd Professional year, but, their result be not declared. We feel that later part of the statement made is not justified. If respondent No.1 has no objection to the petitioners' sitting in annual examination for 2nd Professional year, then there should be no objection to the declaration of their result. That will also facilitate completion of studies and passing of the course by the petitioners. If they are declared failed in some subjects of the 2nd Professional they can appear in the supplementary examination and try to pass those subjects. On the other hand, if their result is not declared now and the same is declared only on passing of all the subjects of 1st Professional, which they are entitled to clear upto May, 2008, then again they will have to appear in the

supplementary examination for the 2nd Professional, that will be too late for them to remember anything, which they have studied in the 2nd Professional.

In view of facts mentioned above, we feel that the petitioners are entitled to appear in the annual examination for 2nd Professional of B.A.M.S. course. Accordingly, we allow this writ petition, by granting above-said relief to the petitioners. The University is directed to declare their result, however, it is made clear that in case the petitioners fail to pass all the subjects of 1st Professional in six chances, permissible to them, i.e. upto May, 2008, they shall not claim any benefit of their putting in appearance and declaration of their result for the 2nd/ 3rd Professional.

In CWP No.3919 of 2007, the petitioner is a student of B.Sc. Nursing course. She has also prayed that she be allowed to appear in annual examination for 2nd Professional year. Regulations are the same. In view of facts mentioned above, this writ petition is also disposed in same terms as in CWP No.4487 of 2007.

(Jasbir Singh)
Judge

May 09, 2007 **(Nirmal Yadav)**
gk **Judge**